



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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October 5, 2012

Ernest J. Mance
DOC 146766
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-270; Alleged Violation of the Access to Public Records Act by the Lake County Prosecutor's Office

Dear Mr. Mance:

This advisory opinion is in response to your formal complaint alleging the Lake County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Robert Persin, Deputy Prosecuting Attorney, responded on behalf of the Prosecutor. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on or about August 21, 2012, you submitted a written request to the Prosecutor for records related to Cause No. 45-G02-0304-MR-00005 and 45-G02-0304-MR-00006. On August 24, 2012, Mr. Persin, Deputy Prosecuting Attorney, responded in writing and denied your request pursuant to I.C. § 5-14-3-4(b)(1). You allege that the records that were requested are not considered to be investigatory records under the APRA.

In response to your formal complaint, Mr. Persin advised that all non-investigatory records that are responsive to your request have been provided. Further, the Prosecutor's denial complied with the requirements of section 9 of the APRA.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Prosecutor is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Prosecutor's public records during regular business hours unless the records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Under the APRA, a public agency denying access in response to a written public records request must put that denial in writing and include the following information: (a) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (b) the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). Here, the Prosecutor responded in writing to your written request within seven (7) days of its receipt. As such, it is my opinion that the Prosecutor complied with section 9 of the APRA in responding to your request.

The APRA provides that a law enforcement agency retains the discretion to disclose its investigatory records. *See* I.C. § 5-14-3-4(b)(1). An investigatory record is defined as “information compiled in the course of the investigation of a crime.” *See* I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.*

You sought copies of the certain records related to Cause No. 45-G02-0304-MR-00005 and 45-G02-0304-MR-00006. In denying your request, the Prosecutor cited to I.C. § 5-14-3-4(b)(1) and provided the name and title of the person responsible for the denial. All records not considered to be “investigatory” have been provided to you. As such, to the extent that you sought investigatory records maintained by the Prosecutor, it is my opinion that the Prosecutor issued a proper denial of your request pursuant to section 9 of the APRA.



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CONCLUSION

For the foregoing reasons, it is my opinion that the Prosecutor did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Robert Persin